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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Appellant, v. WANDA NELSON, Defendant and Respondent.	2d Crim. No. B290806 (Super. Ct. No. 1479637) (Santa Barbara County)

The People appeal from the trial court's order finding respondent Wanda Nelson factually innocent of the murder of Heidi Good. The order was made pursuant to Penal Code section 851.8, subdivisions (b) and (e).[1]

Respondent was indicted by a grand jury. After a jury trial, she was acquitted of murder but found guilty of the lesser included offense of involuntary manslaughter. In a prior appeal by respondent, we reversed the judgment of conviction because

[1] All statutory references are to the Penal Code.

the evidence was insufficient to establish criminal negligence. (*People v. Nelson* (Nov. 6, 2017, B271618) [nonpub. opn.].)

The People contend that reasonable cause exists to believe that respondent committed the offense. We agree and reverse.

Facts

A "judicial determination of factual innocence . . . may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant, and reliable." (§ 851.8, subd. (b).) "The hearing is not limited to the evidence presented at trial. [Citation.]" (*People v. Medlin* (2009) 178 Cal.App.4th 1092, 1101.)

Our summary of the facts is primarily based on evidence presented at the trial. We also consider the grand jury proceedings and a doctor's letter submitted in support of respondent's petition for a finding of factual innocence. Many of the facts were previously set forth in our opinion in the prior appeal.

Background Information

Heidi Good (Heidi) had Amyotrophic Lateral Sclerosis (ALS). The disease rendered her a quadriplegic, but it did not affect her mental faculties. A physician testified that her cognitive abilities "were surprisingly good." According to her husband, she was "[s]harp as a tack."

Because Heidi lacked the muscle function to breathe, she was placed on a ventilator that pumped oxygen into her lungs. The ventilator was connected to her trachea by a tracheostomy tube inserted through a hole in her neck. If the ventilator stopped working or was disconnected, within minutes she would suffer cardiac arrest. Because she could not swallow, she was fed

and given medication through a gastric tube inserted into her stomach. Her physical activity was limited to smiling, moving her eyes back and forth, and blinking.

Heidi could not talk. She communicated through "'eye related interface computer assistance.'" Her eyes would select letters to spell words. When a sentence was complete, a computer would read out what she had written. She also communicated via email. Through eye movements, "[s]he was able to type words, sentences."

Marjorie Good (Marjorie) was Heidi's 87-year-old mother. She lived with Heidi and her family. Marjorie was usually left alone with Heidi every weekday morning from 8:00 a.m., when the nighttime caregiver left, until 10:00 a.m. when respondent, the daytime caregiver, arrived.

Events on the Day Heidi Died

On March 25, 2013 at about 2:00 p.m., while respondent was the sole caregiver on duty, she left the house and drove to Rite Aid to get medication for Heidi. She told Heidi's son, "'I'm going to go run some errands for your mother.'" Son testified that, when respondent left the house, Marjorie "was outside gardening." Son walked outside into a shed in the backyard, where he listened to music with friends. Rite Aid's records show that at 2:12 p.m. someone picked up medication for Heidi.

Heidi's son heard Marjorie yelling. He went inside the house and saw Heidi dead on the bed.

Data recorded by the ventilator shows that a low pressure alarm was activated at 2:03 p.m. But the ventilator's clock was not accurate. It was five minutes fast. Thus, the low pressure alarm was actually activated at 1:58 p.m. The alarm "usually indicates that something is disconnected or there's a leak." "Any

tube disconnected could" cause "a low pressure condition." The alarm produced "a high pitched beeping sound." Data recorded by the ventilator shows that the alarm continued until 2:33 p.m. (actually 2:28 p.m.), when the condition was cleared. Neither Heidi's son nor Marjorie heard the alarm. Marjorie said, "[T]he . . . alarm went off and I didn't hear it because I was outside."

Heidi's Death Certificate

Heidi's death certificate states, "'Decedent's ventilator was tampered with causing her to asphyxiate.'" These words were written on the certificate by Jose Alvarez, "a detective coroner . . . with the coroner's bureau." Dr. Robert Anthony, who performed an autopsy on Heidi's body, told Alvarez that this was the cause of death. Alvarez was asked, "You are testifying that Dr. Anthony dictated to you decedent's ventilator was tampered with causing her to asphyxiate?" Alvarez answered, "Correct."

Respondent's Statements to the Police

The day after Heidi died, Detective Jason Bosma interviewed respondent. She said that "'everything was attached'" to the ventilator when she entered Heidi's bedroom after her trip to Rite Aid. Respondent also said: "Marjorie is deaf. She wears hearing aids. . . . [S]he was outside cutting the hedge" and "probably couldn't hear [the ventilator alarm]."

Several months later, respondent told Detective Matt Fenske that one of the ventilator tubes was "loose" and the alarm "was going off." In her appellate brief respondent acknowledges, "[She] told Fenske that one of the ventilator tubes was loose enough that Heidi[] was not getting air and identified the lowest positioned tube, the exhalation drive line."

Respondent's Trial Testimony

At trial respondent testified: Heidi was "fine" and "smiling" on the day she died. She asked respondent to go to Rite Aid and pick up a medication. Marjorie was outside in the front yard cutting the hedge. Respondent told Marjorie that Heidi had asked her to go to Rite Aid. Marjorie protested, "'[W]ell, why? I usually go.'" Marjorie and respondent walked into Heidi's bedroom. Heidi confirmed that she wanted respondent, not Marjorie, to go to Rite Aid.

Before leaving, respondent checked the ventilator to assure that all of the hoses and tubes were securely attached. Respondent testified, "I learned to make sure that everything is tight before I walk out of [Heidi's] room because I'm aware that things pop off." When she was asked if she had checked the exhalation drive line, respondent replied: "That's part of the whole machine. I check everything, yes." Respondent was then asked, "And when you checked that part of the machine, it was firmly attached; is that right?" Respondent answered: "Yes, it was." "[B]efore I left to go to the store, I made sure everything was attached." "I checked the tubes and I picked up my bag and then I left."

Respondent drove to Rite Aid. In her absence, she "understood that Marjorie was going to be caring for Heidi." But when respondent left, Marjorie "was in the front of the house cutting the hedge" with electric clippers. The clippers were "loud."

At Rite Aid respondent picked up the medication and then purchased a birthday card for Heidi. Respondent drove back to the house. When she arrived, Marjorie was still outside in the front yard cutting the hedge. Respondent had been gone for

about 30 minutes. Upon entering the house, respondent heard the ventilator alarm. She ran to Heidi's bedroom and noticed that the "bottom hose" was disconnected. Otherwise, the ventilator was working "fine." Respondent "automatically" reconnected the hose. "I put the tube back in because that's what we would do. If it pops off, you put it back in." Respondent checked Heidi's pulse and felt nothing. She ran outside to tell Marjorie that Heidi was dead.

The Ventilator

Several different hoses or tubes were connected to Heidi's ventilator. The bottom hose - the one that became disconnected - is the "exhalation drive line." "[W]hen the ventilator pushes air to the patient, air is . . . forced through the exhalation drive line." A valve in the line closes, "seal[ing] off the [line] so that the only place the air can go is into the patient." The exhalation drive line is separate from the tracheostomy tube, which was inserted into Heidi's trachea through a hole in her neck.

During a demonstration of the ventilator before the jury, the alarm sounded when the exhalation drive line was disconnected. The alarm did not sound when the line was "on loosely." In her brief respondent notes, "Even when loosely connected, the ventilator functioned properly until [the exhalation drive line] disconnected."

Gordon Sawyer is a registered respiratory therapist who worked for CareFusion, the manufacturer of the ventilator. He testified that the exhalation drive line is made of a flexible material and is "pushed" onto the connection to the ventilator. "[W]hen you put it on, you will feel resistance and you just push, and it will slide on." "[W]hen you push it on it kind of spreads and grips." "It's a very tight fitting . . . ." "[W]hen it's connected

you can take the drive line and . . . drag the ventilator around. That line is not going to come off. It comes off by wiggling it and you have to kind of pull it off."

Each year CareFusion received about 5,000 complaints concerning its ventilators. In the four years that Sawyer worked for CareFusion, only one complaint was made about the exhalation drive line becoming disconnected. The problem was that the line had not been pushed on properly. If the line were "just barely pushed on," it could disconnect. The line "would have to come off to not function."

Sawyer continued: "[I]n the normal care of a patient," the only time the exhalation drive line is connected or disconnected "is when you're connecting a circuit or getting rid of the circuit. . . . [O]nce it's on, it stays on for the use of that circuit." "A circuit is just the tubing. That's what we call it." Respondent changed the circuit every week. She last changed it on Monday, March 18, 2013, one week before Heidi died.

Except for respondent, no one who cared for or visited Heidi said they were aware of an instance when the exhalation drive line became disconnected. Anita Wright, a caregiver, testified that sometimes the exhalation drive line would become loose, but it would not "pop off." Heidi's husband never found the exhalation drive line "disconnected or loose." Deputy Michael Hollon, who removed the exhalation drive line from the ventilator after Heidi's death, testified that it "required significant force to remove it."

Hoses or tubes other than the exhalation drive line would become disconnected. Heidi's son said that sometimes the hose from the ventilator to the hole in Heidi's neck (the tracheostomy tube) "would come off." No other hoses "came off" when he was

present. Every other time Heidi's daughter visited her mother, the tracheostomy tube would "pop off." This occurred only "when things were moving around . . . . It was always when something was getting done to her." Caregiver Sherrie Gibbs had problems with "the trach hose" and "the little black oxygen line coming out of the back [of the ventilator]."

Evidence of a Motive to Commit Murder

During the interview with Detective Bosma the day after Heidi died, respondent said that she and the other caregivers had received a letter from Heidi and her husband "stating . . . how broke they were" and that they had to reduce the caregivers' pay. The pay cut was "[b]ig time." Respondent told Heidi that the pay cut was unfair because Heidi's husband had recently purchased "a car, two TVs, stuff for his boat." Respondent protested, "'That's not right for you to do that to us.'" Heidi replied, "'Don't tell me how to spend my money.'" "[Heidi] was very cocky." Respondent also told Detective Bosma: "[Heidi] asked me last week if I could work part time. I said, 'Heidi, I'm already struggling working with you.' . . . 'I don't have to do this.' . . . 'I can't afford another pay cut. I have to leave.' So it [working part time] didn't go through."

When Heidi died, respondent was working five days a week. According to Heidi's husband, Heidi was considering the reduction of respondent's time to two days a week. Respondent told Blain Gibbs, "'[D]espite all of my care for . . . Heidi over the years[,] I'm very concerned that she's planning to fire me.'"

About three weeks before she died, Heidi told caregiver Sherrie Gibbs, the wife of Blain Gibbs, that she "might need" to replace respondent. Heidi explained that respondent had stopped speaking to her because of a conflict concerning "'tax issues.'"

Gretchen Glick, Heidi's friend, described the conflict as follows: "Heidi believed that [respondent] was an independent contractor and had been throughout the duration of their employment relationship. And in contrast [respondent] believed that she was an employee and not an independent contractor with respect to tax implications." Because respondent considered herself to be an employee, she assumed that Heidi would withhold taxes on her wages. But Heidi did not withhold taxes.

Nicholas Calandri, Heidi's neighbor, testified that respondent had complained that the Internal Revenue Service (IRS) sent her "1099's or whatever for several years of [back] taxes, and she was upset because she thought that it had been withheld." In response to a question about what respondent had told him regarding "her financial situation with the IRS," Calandri replied: "I can't remember the exact words, but it was bad. I know she was losing her apartment. She was losing everything."

Conflicting Expert Testimony: Dr. Hawley and Dr. Stewart

Dr. Dean Hawley is a forensic pathologist who testified as an expert for the People. He opined that the toxicology report for Heidi "shows that something was put in her stomach at or about the time of her death, and she died even before absorbing that from her stomach." The "something" was alcohol and acetaminophen (Tylenol), a pain reliever. Acetaminophen was "present in the stomach contents but not in the blood." Heidi's stomach contents had an alcohol level of 916 milligrams per deciliter, but there was no alcohol in her blood. The alcohol level of her stomach contents was equivalent to "a blood alcohol content of .91 where .3 is fatal if it's in the blood. It's not fatal in the stomach . . . ." Dr. Hawley further opined "that the time

interval between the placement of the alcohol in the stomach and death was a brief interval." "The most likely thing that happens here is that within minutes of the installation of the [alcohol] in the stomach there's disconnection from the ventilator and prompt death."

Dr. Hawley's testimony conflicts with the testimony of Dr. Judy Stewart, a forensic pathologist called as an expert witness by respondent. Dr. Stewart testified that, after a person drinks alcohol, "it should take about five minutes for there to be a detectable amount of alcohol in the [blood]." Dr. Stewart opined that the high alcohol level of Heidi's stomach contents could have been caused by "exogenous fermentation," i.e., fermentation that occurred "outside the body." The stomach contents were analyzed "[a]bout four or five months after the blood was analyzed." "[T]he alcohol that's present in the [toxicology] report may reflect only alcohol that was formed in the collection vial [during the four or five-month delay] and not alcohol that was actually present in the [stomach] at the time of collection." Heidi's stomach "content has everything available within it that would allow for fermentation. So it's very unclear to me whether that is a real alcohol number or whether it's a phantom number."

But according to Dr. Hawley, an alcohol level of 916 milligrams per deciliter is "[a]lmost ten times higher than any level previously found in scientific studies" that was attributable to postmortem fermentation. "The common instruction in forensic pathology is that we disregard in a decomposing body or decomposing specimen a blood alcohol of less than 100 milligrams per deciliter, but any alcohol above that was consumed."

Irrespective of the alcohol level, Dr. Hawley opined that Heidi had ingested "toxic medications [that] would have

facilitated end of life by suppressing any natural breathing response or agitation during asphyxiation" after the ventilator was disconnected. The medications in her stomach were acetaminophen, hydrocodone, zolpidem, quinidine, diphenhydramine, and dextromethorphan. Except for acetaminophen, Heidi's blood contained the same medications plus dihydrocodeine. "Hydrocodone and [d]ihydrocodeine are opioids . . . in the general class of heroin. . . . [T]hey can be used as sedatives to reduce the anxiety of breathlessness from not breathing." However, all of these drugs had been prescribed for Heidi. Thus, one would have expected them to be present at therapeutic levels. Dr. Hawley opined that, at the time of her death, Heidi was "profoundly sedated."

Letter from Dr. Ungerer

In support of her petition for a finding of factual innocence, respondent submitted a letter from Dr. Ronald Ungerer, Heidi's physician from 2008 until her death in March 2013. Dr. Ungerer wrote that he had been "impressed with [respondent's] attentiveness, dedication, concern and compassion for Heidi." He continued: "After reviewing the Grand Jury testimony, I was . . . convinced that there was no evidence of a crime, and that the most likely event was a spontaneous disconnect of the tubing from the ventilator. This is a very frequent occurrence, which I have personally witnessed on a nearly daily basis over the 35 years I worked in the ICU [intensive care unit]. . . . [¶] . . . I believe [respondent] would never have harmed Heidi and I have always believed the events are consistent with a spontaneous disconnect of the tubing to the ventilator."

Trial Court's Ruling

The judge who granted the petition for a finding of factual innocence was the same judge who had presided at the jury trial. The court did not explain its ruling and made no factual findings. As to Dr. Ungerer's letter, the court merely said, "I find it interesting." We reject respondent's contention that, based on the court's comment about the letter, "we can infer that [it] made a factual determination that Heidi's death was an accident."

After the parties had completed their oral argument, the court stated: "[T]he court finds there was no reasonable cause for the arrest of [respondent] in this case and will grant the [petition] for factual innocence in this matter. That's all, thank you folks. [Petition] is granted." Respondent acknowledges that the court "did not expressly describe why [it] found Respondent factually innocent."

Standard of Review

When a defendant who has been acquitted of an offense petitions for a finding of factual innocence, the trial court "holds a hearing at which 'the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the [defendant] committed the offense [charged]. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense [charged].' (§ 851.8, subd. (b) . . . .)" (*People v. Adair* (2003) 29 Cal.4th 895, 902-903 (*Adair*), brackets in original, fn. omitted.)

"By its terms, section 851.8 precludes the trial court from granting a petition '*unless* the court finds that *no reasonable cause exists* to believe' the defendant committed the offense

charged. (§ 851.8(b), italics added.) In other words, the trial court cannot grant relief if *any* reasonable cause warrants such a belief. [Citation.] ""Reasonable cause"" is a well-established legal standard, "'defined as that state of facts as would lead a man of ordinary care and prudence to believe and conscientiously entertain an honest and strong suspicion that the person is guilty of a crime.'" [Citations.] To be entitled to relief under section 851.8, '[t]he arrestee [or defendant] thus must establish that facts exist which would lead no person of ordinary care and prudence to believe or conscientiously entertain any honest and strong suspicion that the person arrested [or acquitted] is guilty of the crimes charged. [Citation.]' [Citation.]" (*Adair*, *supra*, 29 Cal.4th at p. 904, original brackets in last sentence.)

"Accordingly, the statutory scheme establishes an objective standard for assaying factual innocence. From this determination, it necessarily follows that a reviewing court must apply an independent standard of review and consider the record de novo in deciding whether it supports the trial court's ruling." (*Adair*, *supra*, 29 Cal.4th at p. 905.) On the other hand, "the reviewing court should ordinarily consider itself bound by the trial court's factual findings to the extent they are supported by substantial evidence . . . . " (*Id.* at pp. 905-906.)

Reasonable Cause Exists to Believe that Respondent Committed Murder

"Murder is the unlawful killing of a human being . . . with malice aforethought." (§ 187, subd. (a).) "[W]hen an intentional killing is shown, malice aforethought is established." (*People v. Saille* (1991) 54 Cal.3d 1103, 1114.) Reasonable cause exists to believe that respondent intentionally killed Heidi by disconnecting the ventilator.

Respondent had a motive to kill Heidi. She was upset that Heidi had reduced her pay. Respondent told Detective Bosma that the pay cut was "[b]ig time" and that she had complained about it to Heidi. She was concerned that Heidi was going to make her work part time or fire her. Respondent said to Blain Gibbs, "'[D]espite all of my care for . . . Heidi over the years[,] I'm very concerned that she's planning to fire me.'" The week before her death, Heidi asked respondent to work part time. Respondent protested that she could not "afford another pay cut" and would "have to leave" if she could do only part-time work.

Respondent blamed Heidi for her tax problems because Heidi had not withheld taxes from her wages. According to Nicholas Calandri, as a result of her tax problems respondent "was losing her apartment. She was losing everything." About three weeks before she died, Heidi told caregiver Sherrie Gibbs that respondent had stopped speaking to her because of the "'tax issues.'"

Respondent gave conflicting versions of the condition of the ventilator upon her return from Rite Aid. The day after Heidi died, Detective Bosma asked her, "[W]hen you went in[to Heidi's bedroom] was everything attached properly?" Respondent replied, "Everything was attached." Several months later, respondent told Detective Fenske that the exhalation drive line was "loose." At trial she testified that the exhalation drive line was disconnected. Respondent "put the tube back in because that's what we would do. If it pops off, you put it back in." "The . . . conflicting stories given by [respondent] could fairly support the inference that they . . . reflected a consciousness of guilt. [Citation.]" (*People v. Benson* (1989) 210 Cal.App.3d 1223, 1233; see also *People v. Jordan* (1962) 204 Cal.App.2d 782, 788

[defendant's "resort to inconsistent and conflicting versions of the facts are admissible against him as indicating a consciousness of guilt"].)

It is reasonable to infer that respondent was telling the truth when she testified that the exhalation drive line was disconnected. This would have deprived Heidi of oxygen and activated the alarm. During the demonstration of the ventilator to the jury, the alarm sounded when the exhalation drive line was disconnected. It did not sound when the line was "on loosely."

It is also reasonable to infer that someone intentionally disconnected the exhalation drive line. Once the line was connected, it would not "pop off." Gordon Sawyer testified: "[W]hen it's connected you can take the drive line and . . . drag the ventilator around. That line is not going to come off. It comes off by wiggling it and you have to kind of pull it off." Sherrie Gibbs testified that the line was "very hard to pull off."

There is no evidence that the exhalation drive line was not properly connected. One week before Heidi died, respondent replaced the tubing, including the exhalation drive line. Respondent testified that, before she went to Rite Aid, she checked the exhalation drive line and it was "firmly attached."

The question is, who disconnected the line? Only three persons were in a position to disconnect it: respondent, Marjorie, and Heidi's son. There is no evidence that Heidi's son was involved. In her brief respondent states that she "is not suggesting that [the son] caused Heidi's death."

On the other hand, Marjorie may have had a motive to kill Heidi. Three days before she died, Heidi told caregiver Anita Wright that on Monday, March 25, 2013 - the day Heidi died -

she was going to ask Marjorie to move out of Heidi's home. Heidi said Marjorie had struck her son. Wright testified: "She talked to me about how it had happened to her growing up, also, that her mother would hit her with her hand, and she said it wasn't going to happen, and that was enough, that she was going to have [Marjorie] move." During the weekend before the Monday on which Heidi died, Heidi told her husband that "enough was enough and that she was going to ask [Marjorie] to leave that Monday."

Marjorie was respondent's codefendant and was also indicted for murder. The jury was unable to reach a verdict as to Marjorie, so the trial court declared a mistrial. Marjorie was not retried.

Although Marjorie may have had a motive to kill Heidi, she knew nothing about how the ventilator operated. After Heidi's death Marjorie said that, if she had realized that the ventilator was disconnected, she "wouldn't have known what to [do]." Heidi's husband did not "feel comfortable" when Marjorie was alone with Heidi "[b]ecause if something had occurred with the respirator [i.e., the ventilator] . . . , Marjorie Good would not have known what to do or how to deal with it." Respondent testified that Marjorie "didn't know anything about the ventilator."

Respondent, on the other hand, was familiar with the ventilator. Every week she replaced the ventilator tubing, including the exhalation drive line. When respondent left the house to go to Rite Aid, Marjorie was outside cutting the hedge. It is therefore reasonable to infer that respondent, not Marjorie, disconnected the exhalation drive line. After disconnecting it, she immediately drove to Rite Aid. The ventilator alarm was activated at 1:58 p.m. Respondent testified that she had left

"[s]omewhere around 2:00." A person of ordinary care and prudence could find it more than coincidental that respondent left at approximately the same time the alarm was activated. It is reasonable to infer that respondent believed her absence would provide an alibi.

The testimony of Heidi's son does not exonerate respondent as she claimed at oral argument. Son testified that he "was in the kitchen getting some water getting ready to go outside" when he heard respondent say, "I'm going to run some errands for your mother." He saw respondent "walking out." "[R]ight after [she] walked out," son went outside "straight into the shed" in the backyard where his friends were waiting for him. When he left the house, he did not hear the ventilator alarm. Perhaps, the exhalation drive line had not yet been disconnected. Respondent could have reentered the house and disconnected the line.

Respondent picked up Heidi's medication at 2:12 p.m. The 14-minute interval between the 1:58 p.m. alarm activation and the 2:12 p.m. pickup provided enough time for respondent to drive to Rite Aid and purchase the medication, even though she testified that four people were ahead of her in the line at the pharmacy. After Heidi's death, deputies drove from her house to Rite Aid, purchased bandaids at the pharmacy without waiting in line, and returned to Heidi's house. The round trip took 16 minutes.

Dr. Hawley's testimony, which respondent strongly disputes, is not necessary to establish reasonable cause to believe that she committed the charged offense of murder. We therefore need not determine whether it is reasonable to infer that, before disconnecting the exhalation drive line, respondent gave Heidi a combination of alcohol and drugs to sedate her and alleviate her

suffering from asphyxiation. However, the extremely high concentration of alcohol in Heidi's stomach contents is a suspicious circumstance that contributes to a finding of reasonable cause.

Conclusion

"'"[F]actually innocent" as used in [section 851.8(b)] does not mean a lack of proof of guilt beyond a reasonable doubt or even by "a preponderance of evidence." [Citation.]' [Citation.] Defendants must 'show that the state should never have subjected them to the compulsion of the criminal law - because no objective factors justified official action . . . .' [Citation.] In sum, the record must exonerate, not merely raise a substantial question as to guilt. [Citation.]" (*Adair*, *supra*, 29 Cal.4th at p. 909.)

The evidence does not exonerate respondent. We cannot conclude that "'no person of ordinary care and prudence . . . [would] believe or conscientiously entertain any honest and strong suspicion'" that respondent had disconnected the ventilator with the intent to kill Heidi. (*Adair*, *supra*, 29 Cal.4th at p. 906.) "[T]he statute precludes a finding of factual innocence if *any* reasonable cause exists to believe the defendant committed the charged offense." (*Id*. at p. 907.) Respondent failed to meet her burden of establishing the absence of any reasonable cause.

Disposition

The order finding respondent factually innocent is reversed. The trial court is directed to enter a new order denying respondent's petition for a finding of factual innocence.

NOT TO BE PUBLISHED.

YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Rogelio R. Flores, Judge

Superior Court County of Santa Barbara

Joyce E. Dudley, District Attorney, Marguerite Clipper Charles, Deputy District Attorney for Plaintiff and Appellant.

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